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WORKING SESSION MEMORANDUM

DATE: January 24, 2014


TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development
James Freas, Chief Planner, Long-Range Planning
Amanda Stout, Senior Planner, Long-Range Planning

RE: #294-13: ALD DANBERG proposing amendment to **Sec. 30-24(f) Inclusionary Zoning** to clarify the limitation on use of public funds in constructing inclusionary units and to expand on where the use of public funds for inclusionary units will be allowed.

MEETING DATE: January 27, 2014

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor



EXECUTIVE SUMMARY

This memo is intended to follow-up on information requested by the Zoning and Planning Committee at the October 28, 2013 meeting. A more complete description and analysis of the proposed zoning amendment – which provides a definition for “public development funds” and adds clarifying language to explain circumstances when public development funds might be used – can be found in the memo dated October 11, 2013 and provided by the Planning Department for that meeting. The proposed changes are intended to create the conditions to encourage the development of more affordable housing in Newton.

BACKGROUND

In mid-2012, a small joint working group was formed by the Economic Development Commission and the Newton Housing Partnership to identify and draft proposals for improvement to the current Inclusionary Zoning regulations in Chapter 30 Section 24(f).

The proposed text amendment seeks to rectify two issues with Subsection (9) *Public Funding Limitation*:

1. Defining “public development funds,” since the current Inclusionary Zoning ordinance does not define the term;
2. Clarifying the language used to explain circumstances when public development funds might be used to encourage creating more affordable housing.

The overarching issue, as the EDC and NHP observed, is that it has become so expensive to build any residential development in Newton that all developers must seek creative approaches to financing affordable housing. By opening up more financing options and incentivizing developers to go beyond the requirements of the inclusionary zoning provisions of the ordinance, through clearly allowing the use of public development funds, the City may be able to achieve more affordable units through private development projects.

PROPOSAL

1. Define “public development funds.”

The Inclusionary Zoning Ordinance neither permits the use of public funds nor defines the term. As explained in the October 11, 2013 memo, the proposed amendment would add a definition of “public development funds” based on the definition of “subsidy” under the Massachusetts Comprehensive Permit Statute, *760 CMR 56.00 Comprehensive Permit: Low or Moderate Income Housing*.

To clarify a point raised at the October 28th Working Session, funds that “follow the person,” such as Section 8 tenant-based rental assistance, are excluded from the definition of “subsidy,” and thus, of “public development funds.” Funds that “follow the project” and are tied to real estate, construction, and development are included as a subsidy per State regulations, and thus, would be part of the landscape of public development funds included in the proposed amendment. Referencing an established definition in use by the State adds transparency to Newton’s process.

2. Clarifying the language used to explain circumstances when public development funds might be used to encourage creating more affordable housing.

As discussed in the October 11th memo, Subsection (9) states that developers may not use public funds to meet the affordable share of housing that is required (15% of the dwelling units in developments exceeding two dwelling units). The proposed amendment would maintain this prohibition, but it would also create an incentive for developers to build additional affordable units. If a project proposes the creation of more units (i.e., in excess of the required 15%), units that are more affordable (i.e., to people at 70% of Area Median Income rather than the usual 80%), or a greater level of accessibility than that which is required by law for persons with disabilities, then the for-profit or nonprofit developer would be eligible to use public development funds. The intention of this proposed change is to acknowledge that projects that go “above and beyond” and create more affordability, which is something that the City wishes to encourage, require a greater array of financing sources.

The current language states that when a non-profit developer proposes that half or more of the units will be affordable, the use of public funds is permitted. The proposed language would remove that provision and instead apply a new set of circumstances to both for-profit and non-profit developers, as shown in the table below.

Current policy compared to proposed policy

	Current	Proposed	Proposed
For-Profit Developer	No public development funds to meet required 15% affordable units	No public development funds to meet required 15% affordable units	May use public development funds for those units: <ul style="list-style-type: none">• That represent a <u>greater number</u> of affordable units• That are at least <u>10% lower</u> than the maximum eligible income limit• That exceed requirements for <u>accessible</u> units
Non-Profit Developer	May use public development funds if proposing 50% or more affordable units		

ANALYSIS

Prohibiting public development funds from obligatory affordable units

At both the September 9th and October 28th Working Sessions, members of the committee suggested that the prohibition on public funding might be dropped entirely and the circumstances under which a developer might use public development funds be reviewed as part of the special permit process. Subsection (9) *Public Funding Limitation* currently prohibits the use of public development funds for the purpose of creating the required affordable units (15% of the dwelling units in developments exceeding two dwelling units). According to the EDC/NHP memo dated May 8, 2013, removing this piece of the regulation and opening up the possibility that a developer could seek public development funds towards the required 15% affordable units is contrary to the intent of the Inclusionary Zoning Ordinance; it did not seem appropriate to subsidize something a developer is obligated to do. Therefore, under the proposed change, the subsidy would essentially be available to those who are voluntarily producing affordable housing. An alternative consideration would be to make public funding available to for-profit and non-profit developers even for those 15% units that they are obligated to build. This alternative might allow for greater flexibility in pricing or design, as the developer might be able to more creatively fold the required affordable units into the overall development program if applying for public development funds is part of the financing package. Overall though, this alternative would increase competition for scarce public funds without necessarily providing a greater benefit. Thus, it is recommended to reserve public development funds to ensure that a proposed development is in fact “going above and beyond” and meeting the City’s affordability goals.

Impact on affordable housing developers

The developer who is most likely to benefit from this policy change is the for-profit or non-profit developer who is mission-driven – that is, who is interested in voluntarily providing affordable housing, rather than merely complying with the requirements – and who is already needing to go through the City’s special permit process due to the size or scope of the project (e.g. a mixed-use project that includes residential, retail, and office uses and is therefore ineligible for the 40B process). Developers will seek public development funds (which may include City funds) before entering the permitting process. This policy acts as a “carrot” to further incentivize those projects that will already need to go through the special permit process.

- The change is less likely to incentivize small-scale developers and developments. It must be financially worthwhile to the developer to go through the often-complex processes to apply for public development funds and for a special permit.
- The change may incentivize developers to seek non-City public development funds (e.g., low-income tax credits) that are typically used to finance larger-scale (30+ unit) projects.
- The change will not impact a developer who has already decided to build a project under 40B; this policy only applies to projects that are built under the Inclusionary Zoning Ordinance and are applying for a special permit.

Impact on the use of City-controlled public development funds

At the October 28th Working Session, Planning staff suggested that the policy change might bring more applications for City funds but it will not reduce the availability of these funds. It would remain the decision of the City as to whether a particular application would be supported or not. While there might be some additional competition for limited funds, this policy change would give the City “another tool in our toolbox” to assist developers in building more affordable units than they otherwise might have built. The review processes for funding will remain unchanged – and will only attract those developers who are serious and ready to build. Most forms of public subsidy have their own affordability requirements and review processes, and these would remain intact.

In addition to creating more units and more units at a lower rent, the proposed change also would enable a developer to apply for public development funds to exceed the requirements for accessible units. If the developer is seeking City-controlled funds, it will be the task of the developer to make an argument for the value-added of these units at the financing stage. It will also be the role of City staff to review and make recommendations on the value of these units.

Impact on the Newton Housing Authority

At the October 28th Working Session, Planning staff suggested that the change does not appear to have any negative effects and would have a positive effect on the Newton Housing Authority (NHA). The NHA is a quasi-public, mission-driven developer that already uses public subsidy to exceed affordability requirements.

Impact on density of development

At the October 28th Working Session, the Committee inquired as to whether the density of development would increase if developers take advantage of the new policy or if it would just increase the number of affordable units within the same density. The Inclusionary Zoning Ordinance only applies to those projects that are going through the special permit process. This policy change would not offer any density bonus, but it might encourage a developer to finance more affordable units within the parameters of the project.

PROPOSED TEXT AMENDMENTS

1. Revise Chapter 30, Section 24, (f) Inclusionary Zoning (9) Public Funding Limitation

~~The intent of section 30-24(f) is that an~~ An Applicant is ~~shall~~ not to use public development funds to construct Inclusionary Units required under this section. Public development funds shall mean funds for housing construction or rehabilitation if provided through a program eligible to serve as a 'subsidy' under 760 CMR 56.00 Comprehensive Permit: Low or Moderate Income Housing. However, the Applicant may use public development funds to construct those Inclusionary Units that are found by the Director of Planning and Development to be consistent with any of the following:

- a) Those that represent a greater number of affordable units than are otherwise required by this subsection;
 - b) Those that are lower than the maximum eligible income limit for some or all inclusionary units by at least ten percentage points below that stipulated in §30-24(f)(1);
 - c) Those that exceed regulatory requirements in providing for persons having disabilities.
- ~~; this provision however, is not intended to discourage the use of public funds to generate a greater number of affordable units than are otherwise required by this subsection. If the Applicant is a non-profit housing development organization and proposes housing at least 50 per cent of which is affordable to Eligible Households, it is exempt from this limitation.~~

NEXT STEPS

If the Zoning and Planning Committee agrees with the analysis provided by the Planning Department, staff recommends this item be scheduled for a Public Hearing on February 24, 2014. If further consideration is necessary, staff requests the Zoning and Planning Committee provide direction as to what additional data and analysis it may need to inform further its decision-making.